IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/10/2003

CORAM

THE HONOURABLE MR. JUSTICE V. KANAGARAJ

Crl.OP. No. 22873 of 2003 and Crl.OP. No. 22953 of 2003

1. M/s. Indo Pacific Inc.,
rep. by its Partners
Vijay S. Naidu & Ravikumar Reddy
46/3, C.M. Mohan Buildings
Tankur Road, Yeshmanthapuram
Bangalore - 560 028

2. Vijay S. Naidu ... Petitioners in
3. Ravikumar Reddy both the petitions

-Vs-

V. Ramesh ... Respondent in both
the petitions

Petitions filed under Section 482 Cr.P.C. praying to call for the records in C.C. Nos. 160 of 2003 and 161 of 2003 respectively on the file of Judicial Magistrate VI, Tiruchirapalli and quash the same.

!For Petitioners : Mr. M.V. Muralidharan in both the Petitions

^For Respondent : Mr. M. Devaraj in both the Petitions

:COMMON ORDER

These petitions have been filed praying to quash the complaints in C.C. Nos. 160 and 161 of 2003 respectively filed by the respondent herein under Section 138 of the Negotiable Instruments Act against the petitioners on the file of the Court of Judicial Magistrate No.VI, Tiruchirapalli.

2. The Complainant/respondent herein has filed the complaint in C. C. No. 160 of 2003, claiming himself to be one of the partners of the first petitioner firm namely M/s. Indo Pacific Inc.; that according to the complainant, due to personal reasons, he retired from the

partnership with effect from 31-12-2002; that during his tenure as Partner, he was a tenant under the 2nd respondent in respect of a residential portion for a monthly rent of Rs.2,000/- per month; that a sum of Rs.30,000/- was paid by the complainant as advance to the 2nd Accused; that there were no rental arrears due and payable by the complainant; that while vacating the premises, the complainant demanded refund of the advance amount of Rs.30,000/-, but it was not complied with till date. The complainant further alleges that he has advanced a sum of Rs.85,000/- as hand loan to the first accused firm, which was also not repaid, and hence in all, the accused are liable to pay Rs.1,15,000/- to the complainant; that on 31-12-2002, the 2nd and 3rd accused, for and on behalf of the 1st accused firm issued a cheque for a sum of Rs.85,000/- to the complainant and on its presentation, the cheque was returned unpaid by the bankers with an endorsement 'payment stopped by the drawer'; that thereafter, the complainant issued a legal notice to all the accused on 24-03-2003 demanding the cheque amount, for which a reply dated 10-04-2003 was issued by the accused with untenable reasons, and thereafter, on completion of 15 days, the complaint in C.C. No. 160 of 2003 was filed by the complainant against the accused, consequent to the dishonour of a cheque issued by the accused in favour of the complainant for a sum of Rs.85,000/-.

3. Likewise, in the same manner, yet another cheque drawn on the Union Bank of India bearing Cheque No.204988 dated 28.2.2003 issued for the balance settlement of a sum of Rs.1,15,000/= by the second and third accused, for and on behalf of the first accused in favour of the complainant having been returned unpaid for insufficiency of funds, after issuing the statutory notice and observing the other legal requirements, this cheque also having been returned with remarks ' payment stopped by the drawer' as per the returned memo. of the Bankers dated 17.3.2003 and the complainant, then issuing the statutory notice dated 24.3.2003, which was received by the first and second accused on 28.3.2003 and the notice issued to the third accused having been returned with the remarks 'not claimed', all the accused have jointly sent a common reply dated 10.4.2003 on an alleged false and unreliable version and on the expiry of the statutory time limit, the complaint has been filed under Sections 138 and 142 of the Negotiable Instruments Act, seeking the relief sought for in the complaint.

4. During arguments, learned counsel for the petitioners submits that the respondent herein was one of the partners of the accused firm and on his retirement on 31-12-2002, a re-constitution deed was executed and registered, wherein under clause 18 (q), it is categorically stated that any demand in respect of a past transaction of the firm made by the outgoing partner shall be made good by the outgoing/ retiring partner and also the continuing partners, sharing in equal proportions. It is further submitted that subsequent to the retirement of the respondent herein, the accused firm received a letter dated 03-02 -2003 from one Mohamed Fareed Mohideen, Managing Partner of Medical Systems Pvt Ltd, Colombo, Srilanka demanding an amount to the tune of Srilankan Rupees 3.333 million payable by the accused firm for the transaction done prior to 31-12-2002; that according to the petitioners, the respondent herein, who was one of the partners of the accused firm till 31-12-2002, has to share equally the demand made by the said Mohamed Fareed Mohideen and therefore, the cheque issued by the accused firm to the

respondent herein was stopped.

5. The learned counsel appearing for the petitioners relied on the contents of clause 18 (q) of the reconstitution deed in support of his argument wherein it is stated that "any demands, liabilities, outgoing, by any government department or private individuals, or persons or institutions, in respect of the firm, made by the outgoing/ retiring partner as Managing Partner of the firm prior to 31-12-2002 shall be made good or paid by the outgoing/ retiring partner and also the continuing partners sharing in equal proportions".

6. The learned counsel further argued that a duty is cast upon the respondent herein, as one of the partners of the firm prior to 31-12 -2002, to share in equal proportion, the demand made by the said Mohideen. The learned counsel also argued that only after issuance of the cheque, the demand was made by the said Mohideen and therefore, the payments on the cheques issued in favour of the respondent were stopped and on such arguments, he would pray for quashing the complaints pending before the court below.

7. On the part of the respondent/complainant, besides denying the contentions of the petitioners factually in his arguments, he would rely on a judgment rendered by the Apex Court reported in (2002) 1 SCC 234 (M.M.T.C. Ltd., v. Medchl Chemicals & Pharma (P) Ltd. wherein it is held that since in the complaint therein, there was no specific allegation of existence of any debt or liability, the High Court held that the cheques were issued as security and not for any debt or liability existing on the date of issuance. Opposing the appeals, the respondent contended inter alia, that the cheque having bounced on account of stoppage of payment by the drawer and not on account of insufficiency of funds, Section 138 was not attracted. Setting aside the High Court's judgment, the Supreme Court held that the only eligibility criterion prescribed by Section 142 for maintaining a complaint under Section 138 is that the complainant must be a payee or the holder in due course. This criterion is satisfied in this case as the complaint is in the name and on behalf of the appellant Company. Therefore, even presuming that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage, the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on that ground.

8. In consideration the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the petitioners, who are the accused, among whom the first accused who is the company and accused No.2 and 3 who are the partners of the said company, have issued two cheques in favour of the respondent/complainant, one for a sum of Rs.85,000/= and the other for a sum of Rs.1,15,000/= and they both having come to be dishonoured and returned unpaid for the specific reason 'payment stopped by the drawer', issuing the necessary statutory notices in both the said cases, thus giving the opportunity contemplated by law, since the money was not settled within the specified time, the respondent has ultimately come forward to file both the complaints in C.C. Nos.160 and 161 of 2003 on the file of the Court of

Judicial Magistrate No.VI, Tiruchirapalli and it is these cases that the petitioners/ accused have sought to be quashed by filing the above two petitions on the ground that the under clause 18(q) of the Reconstitution Deed executed on the retirement of the respondent from the said company as a partner on 31.12.2002 which recites that any demand in respect of the past transactions of the firm made by the out going/retiring partner shall be made good or paid by the outgoing/retiring partner and also the continuing partners sharing in equal proportions.

9. The true extract of the particular provision of the Reconstitution Deed is to the effect that "any demands, liabilities, outgoing by any government department or private individuals or persons or institutions, in respect of the past transactions of the firm, made by the out going/retiring partner as managing partner of the firm prior to 3 1st December, 2002, shall be made good or paid by the outgoing/ retiring partner and also the continuing partners sharing in equal proportions. Here, it is clear that only if the outgoing partner had such commitments in the capacity as the managing partner, he is liable to make good the loss or liable and not otherwise. Secondly, whether on facts, the demands, liabilities, outgoing by the Government Department or private individuals or persons or institutions in respect of the firm actually accrue so as to make the outgoing partner liable for making good the loss or compensate the same along with the existing partners sharing in proportions is a question of fact and it has to be established only on facts and on letting evidence, with due opportunity for the other side to meet the challenge, and therefore, it is not the matter that could be subjectively decided by this Court that there exists a fact of demand or liability or outgoing by the government department or individual to the firm, and therefore, it is only desirable for the trial to take place in the said cases and the trial court, in consideration of the over all facts and circumstances of the case and in appreciation of the evidence let in, will be able to arrive at a valid decision, and therefore, it is not at all desirable on the part of this Court to cause its interference in a subjective manner in such matters of importance.

10. Moreover, it is not a case on any other commercial basis or liability or transaction held on the basis of agreement, etc., but a bounced cheque case, wherein the moment the bounced cheque is produced before the Court on a case constituted under Section 138 of the Negotiable Instruments Act for the reason on insufficiency of funds by virtue of the presumption created by law under Section 139 of the Negotiable Instruments Act, the Court shall presume that the said cheque has been issued only for the debt or other liability and in these processes, having ordered stop payment is not a point for consideration in favour of the petitioners, since instead of permitting the cheque being bounced for insufficiency of funds in order to cheat the payees, he can even order stop payment without having sufficient funds in the Bank so as to honour the cheque, and therefore, in such cases, the paramount duty of the trial court is to find out that at the time of the drawer of the cheque ordering stop payment whether there had been sufficient funds in his account so as to honour the cheque and if the funds are not there, it is nothing but a case of bouncing of the cheque for insufficiency of funds and it is also the business of the trial court to ascertain this fact

prior to arriving at any decision.

11. For all the above discussions held, this Court does not find any valid or tangible reason existing in favour of the petitioners so as to quash the case registered in C.C. Nos.160 and 161 of 2003 on the file of the Court of Judicial Magistrate No.VI, Trichirapalli.

In result, both the above criminal original petitions do not merit acceptance and they are dismissed as such.

while dismissing the above petitions, the personal attendance of petitioners 2 and 3 before the lower court is hereby dispensed with on all future dates of hearing and to appear by pleader except for those hearings wherein their presence will become indispensable such as for preliminary questioning, questioning under section 313 Cr.P.C., pronouncement of Judgment, etc. when the lower court will be at liberty to summon them in accordance with the procedures laid down under Section 205 Cr.P.C.

Consequently, Crl.M.P.Nos.6483, 6484, 6509 and 6510 of 2003 are also dismissed.

rsh/gs.

To
The Judicial Magistrate No.VI, Trichirapalli.